IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.7.2006

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THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

WRIT PETITION NO.12848 of 2006
and
W.P.M.P.NO.14441 of 2006

R.Karuppasamy

... Petitioner

Vs.

1. The Deputy Registrar of
   Co-operative Societies
   Pollachi,
   Coimbatore Circle
   Coimbatore District.

2. The Inspector of Police
   Commercial Crime Investigation
   Wing (C.I.D.)
   Coimbatore District.

3. Senjeri Malayadipalayam Farmers Service
   Co-operative Society Ltd.,
   rep. by its Special Officer
   Malayadipalayam, Sultanpet Branch,
   Coimbatore District. ... Respondents

R3 impleaded as per order of Court
dated 12.7.2006 in WPMP.No.16473 of 2006.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus as stated therein.

For Petitioner : Mr. S.Kolandasamy
For Respondents : Mr. M.S.Palanisamy for R3

O R D E R

Considering the short point involved in the writ petition, by the consent of parties, the writ petition itself is taken up for final disposal.

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2. The writ petition is filed for the issue of a Writ of Mandamus forbearing the respondents from proceeding further including the arrest of the petitioner pending on the file of the 2nd respondent and any proceedings in violation of the provisions of sections 81, 161, 162 and 164 of the Tamil Nadu Co-Operative Societies Act, 1983 and Entry 43 of List-I, Entry 32 of List II and Entry I of List III of the Constitution of India as it is arbitrary, null and void and without jurisdiction so far as the petitioner is concerned.

3. The case of the petitioner in brief is as follows:-

3.1. The petitioner was working as Assistant Secretary in the third respondent Co-operative Society. The petitioner was temporarily suspended from 23.4.2006 since he was absent from duty without any intimation, and as per directions of the Special Officer, he handed over the charge to the Head Clerk.

3.2. The Special Officer audited the accounts for the period from 1.4.2005 to 31.3.2006. In the audit report, it is stated that the petitioner sanctioned excess loan for a sum of Rs.9,01,027.20 without deposit in the savings account and that he also sanctioned loans in excess of the amount in deposit to fixed deposit holders. Proceedings were initiated against the petitioner and the second respondent was informed of the misappropriation of a sum of Rs.15,71,027/- by the petitioner and the property of the petitioner was also attached by the first respondent.

3.3. There is no legal opinion obtained in this matter and no sanction granted under section 164 of the Tamil Nadu Co-operative Societies Act.

3.4. The complaint given by the first respondent to the second respondent is pending investigation. Though the petitioner's name is not shown as an accused, the petitioner apprehends arrest as there is every possibility of inclusion of his name in the first information report. Hence, this petition.

4. At the outset, the learned counsel appearing for the third respondent submitted that it is not a fit case which calls for the exercise of extraordinary power of the High Court and relied upon the decision of the Apex Court in STATE OF HARYANA V. BHAJAN LAL (1992 Supp (1) SCC 335:AIR 1992 SC 604), wherein it is held as under:

> "The following categories of cases can be stated by way of illustration wherein the extraordinary power under Art.226 or the inherent powers under S.482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly

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defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if there are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.15 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"

5. Recently, in STATE OF ORISSA v. SAROJ KUMAR SAHOO (2005) 13 SCC

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540), the Apex Court held as follows:

> "The inherent power should not be exercised to stifle a legitimate prosecution. The Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard and fast rule as regards cases in which such power can be exercised can be laid down."

6. In the present case, as seen from the affidavit filed by the petitioner, the proceedings initiated by the first respondent against the petitioner are pending and on the complaint lodged by the first respondent, the second respondent police is investigating the matter. It is also stated that the name of the petitioner is not shown as an accused. Therefore, only a complaint has been lodged at the police station and an offence is registered. In such case, the allegations of mala fide against the informant and the apprehension of the petitioner that he would be arrested by the police are of no consequence and cannot by themselves be the basis for exercising the extraordinary power under Article 226 of the Constitution of India.

7. In this view of the matter, the relief sought for by the petitioner cannot be granted. The writ petition is liable to be dismissed and accordingly, it is dismissed. No costs. Connected WP.M.P.No.14441 of 2006 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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3. The Special Officer,
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   Co-operative Society Ltd.,
   Malayadipalayam, Sultanpet Branch,
   Coimbatore District.

+1cc to Mr.M.S.Palani Swamy, Advocate Sr 30157

PV (CO)
km/25.7.

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